SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1968

No. 257

EX PARTE, IN THE MATTER OF THE PETITION OF OLIVER LEE YORK AND MARGARET EDNA YORK FOR ADOPTION OF A FEMALE INFANT

Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

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IN THE

Supreme Court of the United States

October Term, 1968

No. _____

EX PARTE, PETITION OF OLIVER LEE YORK AND MARGARET EDNA YORK FOR ADOPTION OF A FEMALE INFANT

Oliver Lee York,
Margaret Edna York,
Petitioners

Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

Oliver Lee York and Margaret Edna York, Petitioners, respectfully pray that a Writ of Certiorari issue to review the judgment denying a petition for appeal of the United States Court of Appeals for the District of Columbia Circuit entered in this cause April 4, 1968.

OPINION BELOW

The opinion rendered by the United States Court of Appeals for the District of Columbia Circuit was an Order dated April 4, 1968 denying petitioners' petition for the allowance of an appeal of the two questions presented here and is set forth in full in Appendix E herein.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on April 4th, 1968 (Appendix E herein).

The jurisdiction of this Court is invoked under 28 U.S.C., 1254 (1) in that this is an appeal from the final judgment rendered by a United States Court of Appeals in a civil action wherein the petitioners claim that their rights have been violated and they have been denied the due process of law protection guaranteed them by the Constitution of the United States.

QUESTIONS PRESENTED

1. Was due process of law denied to the Petitioners when the trial judge denied the petition for adoption after he had secretly, in advance of hearing, examined the Department of Public Welfare investigative report which recommended denial of the petition for adoption, which report was never submitted into evidence, and refused to permit an oral hearing relative to the report and then refused to permit counsel for petitioners an opportunity to examine said report in order that counsel might effectively determine what charges were made and by whom they were made in order to defend and protect the rights of petitioners, and such erroneous action was not reversed on appeal.

2. Was due process of law denied to the petitioners when the Department of Public Welfare recommended denial of the petition for adoption, refused to grant the necessary consent, and the trial judge did not appoint a guardian *ad litem* to represent the interests of the prospective adoptee, and such erroneous action was not reversed on appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the due process protections guaranteed petitioners by the fifth and the fourteenth amendments to the Constitution of the United States.

In view of the fact that adoption procedures are regulated by statute, the District of Columbia Code provisions involved in the questions on appeal are numerous. The pertinent provisions are set forth as follows:

> Title 16, Section 311. Sealing and inspection of records and papers. "From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings."

Also, D. C. Code, Title 32, Section 786:

> "(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of

the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedures."

And D. C. Code, Title 32, Section 789:

"The Board of Public Welfare is authorized to make such investigations and inspections as are necessary to carry out the provisions of this chapter."

In addition, the following provisions of Title 16, which specifically set forth the requirements for adoption proceedings:

Title 16, Section 301. Jurisdiction

"(a) Subject to subsection (b) of this section the Domestic Relations Branch of the District of Columbia Court of General Sessions has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any one of the following circumstances exist:

(1 and 2 omitted)

(3) the child to be adopted is in the legal care, custody or control of the Commissioners or a child-placing agency licensed under the laws of the District.

Title 16, Section 304. Consent

"(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, *after a hearing,* that the consent or consents are withheld contrary to the best interests of the child." (emphasis supplied).

Title 16, Section 307. Investigation, report and recommendation

"(a) . . . . upon the filing of a petition the court shall refer the petition for investigation, report and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Board of Commissioners, if the case is not supervised by a licensed child-placing agency.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case."

STATEMENT OF THE CASE

Petitioners, Oliver Lee York and Margaret Edna York, husband and wife, in the month of June, 1966 petitioned the Domestic Relations Branch of the District of Columbia Court of General Sessions for the adoption of a female infant. From the denial of that petition, they have noted the present appeal citing errors committed by the trial judge which they contend effectively deprived them of a reasonable opportunity to defend, enforce and protect their rights and thereby did not satisfy the Constitutional requirements for due process of law.

Between the years 1951 and 1966, the petitioners provided board and care for more than fifty (50) wards of the District of Columbia in return for monetary consideration. In 1951 petitioners adopted one of the first children placed in their home, who is now the seventeen year old son living with petitioners. Normally, the children were placed in petitioners' home for a few months and then removed. In 1960, the prospective adoptee, then a thirty-five day old female infant born out of wedlock, whose mother had relinquished her parental rights to the District of Columbia, was placed in petitioners' home. Because the child was sickly, she was permitted to remain there for six (6) years until 1966.

In 1966, petitioners initiated adoption proceedings and, upon order of the court, the Department of Public Welfare was ordered to verify the allegations of the petition by virtue of a thorough investigation "for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioners is a suitable one for the adoptee" and to "report its finding with recommendation to this Court." (Appendix A)

Pursuant to the ordered investigation, the Department of Welfare submitted its report to the Court, wherein it recommended denial of the petition for adoption. In addition, the Department of Public Welfare surreptitiously removed the prospective adoptee from the custody of the petitioners.

Upon being advised that the child which had been with them for six years was removed from their custody by the Department of Public Welfare, and that the Department would not consent to the adoption by petitioners for reasons set forth in their report to the Court recommending denial of the petition for adoption, petitioners moved the court for an oral hearing on said report.

Pursuant to a Rule to Show Cause (Appendix B), the court held a hearing to determine whether the motion for oral hearing on the report and recommendations of the Department of Public Welfare should be granted and, if not, why the petition for adoption should not be denied. The court ordered the Corporation Counsel to enter an appearance and to represent the Department of Public Welfare, which refused to supply the necessary consent in such hearing. A guardian *ad litem* was not appointed to represent the interests of the prospective adoptee.

Prior to the hearing, the trial judge read the report and recommendations of the Department of Public Welfare and refused to permit petitioners' counsel an opportunity to examine the report. Although the court verbally advised counsel of the generic nature of the disqualifying information contained in the report, counsel was unable to determine either the source or the extent of such information in order to adequately defend the petitioners from such unfounded, unproven allegations and thereby protect their right to preserve their reputation and their right to adopt the female infant.

As a result of the hearing, the trial judge overruled the motion for an oral hearing upon the report and recommendation and denied the petition for adoption by Opinion and Order dated February 17, 1967 (Appendix C). The questions of the right of the trial court to refuse the request for an oral hearing on the disqualifying report and recommendations and the refusal to permit an examination thereof by counsel for petitioners, as well as the failure to appoint a guardian *ad litem* to protect the interests of the prospective adoptee were appealed to the District of Columbia Court of Appeals, which affirmed the action below (Appendix D). Petition for appeal of the same questions to the United States Court of Appeals for the District of Columbia Circuit was denied (Appendix E).

Your petitioners seek the issuance of a writ of certiorari to review the final judgment of the United States Court of Appeals for the District of Columbia Circuit.

HOW FEDERAL QUESTIONS ARE PRESENTED

On petition for appeal to the United States Court of Appeals for the District of Columbia, counsel for the petitioners invited the attention of the court to "the trial judge's departure from accepted and usual course of judicial proceedings" in the court's denial of counsel's request to review that portion of the investigative report which contained disqualifying derogatory information relating to the petitioners. As a result of such denial, counsel for petitioners was required to blindly subpoena and examine witnesses "due to his lack of knowledge as to who was responsible for each adverse allegation. This was clearly a departure from the usual course of judicial proceedings . . . "

In addition, the petition for appeal stated that it was "mandatory for a trial judge to give consideration to the appointment of a guardian *ad litem* for a minor . . . " and that it was reversable error for the trial judge not to have done so. Such an error is so "fundamental in character" that it rendered the judgment voidable, stated counsel for petitioners.

The above claims of error had been made to the District of Columbia Court of Appeals, which failed to reverse the trial court and, petition for appeal to the United States Court of Appeals for the District of Columbia Circuit denied the appeal.

On the basis of the foregoing, the petitioners have been denied the due process of law guaranteed them by the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

1. PETITIONERS, OLIVER LEE YORK AND MARGARET EDNA YORK, WERE DEPRIVED OF DUE PROCESS OF LAW WHEN THE DISTRICT OF COLUMBIA DOMESTIC RELATIONS BRANCH, COURT OF GENERAL SESSIONS TRIAL JUDGE, IN DENYING THE PETITION FOR ADOPTION, IN ADVANCE OF HEARING, WITHOUT SAID REPORT HAVING BEEN SUBMITTED INTO EVIDENCE, SECRETLY EXAMINED THE DEPARTMENT OF PUBLIC WELFARE REPORT WHICH RECOMMENDED DENIAL OF PETITION FOR ADOPTION AND REFUSED PETITIONERS AN ORAL HEARING RELATIVE TO SAID REPORT, AND THEN REFUSED TO PERMIT COUNSEL FOR PETITIONERS AN OPPORTUNITY TO EXAMINE SAID REPORT IN ORDER TO EFFECTIVELY DETERMINE WHAT CHARGES WERE MADE AND BY WHOM THEY WERE MADE, IN ORDER TO PROPERLY DEFEND AND PROTECT THE RIGHTS OF PETITIONERS, AND SUCH ERRONEOUS ACTION WAS NOT REVERSED ON APPEAL BY EITHER THE DISTRICT OF COLUMBIA COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The principle of due process of law is intended to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty or his property. The enjoyment of private reputation unassailed is a right entitled to the protection of the law and of the constitution as much as are the rights to the possession of life, liberty, or property.

The inhibitions of the due process provisions of the Constitution include not only the political but also the judicial departments of the government. *Barrows v. Jackson,* 346 U. S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031, reh. den. 346 U. S. 841, 98 L. Ed. 361, 74 S. Ct. 19. The due process of law clauses of the Federal Constitution are standing guarantees of substantial justice and prevents such arbitrary action as would deny a litigant a substantially fair trial.

The Federal Supreme Court of course normally will not interfere on appeal unless the judgment is in clear conflict with those fundamental principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. If the error is gross and obvious, coming close to the boundary of arbitrary action, there may be a violation of the guaranty of due process. *Corrigan v. Buckley,* 271 U. S. 323, 70 L. Ed. 969, 46 S. Ct. 521; *Jones v. Buffalo Creek Coal & Coke Co.,* 245 U. S. 328, 62 L. Ed. 325, 38 S. Ct. 121.

The record on appeal in this case discloses that the trial court issued a "Rule to Show Cause" directed to both the petitioners and the Department of Public Welfare relative to the petition for adoption, wherein petitioners were ordered to show cause why their petition for adoption "should not be denied", and further to show the Court "what standing, if any, they possess to move for an oral hearing upon the report and recommendations . . . " of the Department of Public Welfare. (See Appendix B)

At the outset, therefore, petitioners were placed in the untenable position of proving to the Court that they were entitled to the basic fundamentals of jurisprudence which guarantee the enjoyment of private reputation unassailed. In view of the undisclosed, derogatory, disqualifying information against the reputation of the petitioners contained in the report and recommendation of denial of petition for adoption, the petitioners, having moved for an oral hearing on the report and recommendations, were entitled to know the contents thereof, by whom the allegations were made and then be presented an opportunity to examine their accusers at a hearing for that purpose. To order petitioners to "show cause" why they should have an oral hearing relative to a right that is so fundamental, is so contrary to our system of

jurisprudence for the protection and enforcement of private rights, that it appears to be an arbitrary action, or so close to the boundary, as to violate the guarantee of due process.

The requirements of due process are not met where the right of hearing is granted only on conditions so harsh and oppressive as to be tantamount to a denial of the right. *Wadley So. R. Co. v. Georgia,* 235 U. S. 651, 59 L. Ed. 405, 35 S. Ct. 214. To order petitioners to "show cause" why an oral hearing should be had on charges against them that they neither knew who had made them nor the exact contents thereof was extremely harsh and oppressive.

A "hearing" is the hearing of evidence and argument, and has reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts and the issue determined uninfluenced by extraneous considerations. By the terms of D. C. Code, Title 16, S. 301 (a), the trial court was charged:

> ". . . with authority to make such rules not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, . . . the petitioner, and any other properly interested party."

It certainly cannot be contended that the denial of the hearing requested by petitioners on the report and recommendations of Public Welfare had the effect of "bringing fully before the court for consideration the interests of . . . the petitioner" or, for that matter, those of the prospective adoptee.

In an attempt to comply with the "Rule to Show Cause" counsel for petitioners requested the opportunity to examine the portion of the "report and recommendation" relating to the petitioners and the request was denied. However, the trial judge verbally advised petitioners'

counsel of the "generic nature of the disqualifying information" (Appendix C, page 5), thereby admitting that he had read the "report" prior to the "hearing" on the Rule to Show Cause.

In Re Blumenthal's adoption, 346 F.2d 783, 3rd Circuit, 1965, is a case exactly on point. McLaughlin, Circuit Judge, wrote:

> "In the same category appears the confidential report of the Welfare Department which the judge examined. This too, should have been subject to examination, to objection, to contradiction. . . . the court should have been alerted to the error of privately reading a document which was not in evidence in this carefully circumscribed proceeding. Obviously, the report may well have had an important bearing on the court's determination."

The refusal by the trial court to permit an inspection of the "report and recommendation" was predicated on the provision of the D. C. Code, Title 16, Section 311:

> "From and after filing of petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected."

The above section makes no provision for private inspection by the court of record, when that portion, such as the withholding of consent, is at issue. Where objection and a motion for hearing has been made, the hearing must be granted in order to "bring fully before the court for consideration the interests of the prospective adoptee, . . . the petitioner, and any other properly interested party."

Uniform Adoption Act, Section 6, provides:

> "Withdrawal of any consent filed in connection with a petition for adoption hereunder, shall not be permitted, except that the court, *after notice and opportunity to be heard is given to the petitioner,* (emphasis supplied) to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent."

Although the Uniform Adoption Act is not applicable to the District of Columbia, it is quoted as an authority on adoption procedures. The withholding of consent by the Department of Public Welfare would be in the same category, and the petitioners were entitled to the requested hearing in the absence of statutory prohibition thereof.

Another authority, 2 AmJur 2d, *Adoption,* Section 39, at page 892, states:

> "In other words, when an approved agency, as the custodial guardian, refuses to file its written consent in an adoption proceeding, the court, *after a hearing on the reasonableness of its action,* (emphasis supplied), may, in the proper exercise of judicial discretion, enter an order dispensing with the necessity of consent."

The very gross and obvious error of the trial court in denying a hearing on the withholding of consent, which was the most vital part of this adoption proceeding, deprived the petitioners of the right to contradict by proof every material fact which bears on the question of the right involved, and the failure to disclose to petitioners

documentary evidence and, even more important, testimony, in order to present an opportunity to show that it was untrue was such a gross error that it deprived the petitioners of the due process of law protection afforded them by the Constitution of the United States. *Greene v. McElroy*, 360 U. S. 474, 3 L. Ed. 2d 1377, 79 S. Ct. 1400; *Beard v. Stahr*, 370 U. S. 41, 8 L. Ed. 2 321, 82 S. Ct. 1105.

Petitioners pray that this Honorable Court reverse the proceedings below and remand this case for a hearing on the adoption petition that is not inconsistent with the rights of due process to which the petitioners are entitled.

2. PETITIONERS, OLIVER LEE YORK AND MARGARET EDNA YORK, WERE DEPRIVED OF DUE PROCESS OF LAW WHEN THE DISTRICT OF COLUMBIA DOMESTIC RELATIONS BRANCH, COURT OF GENERAL SESSIONS, TRIAL JUDGE DID NOT APPOINT A GUARDIAN *AD LITEM* TO REPRESENT THE INTERESTS OF THE PROSPECTIVE ADOPTEE WHEN THE DEPARTMENT OF PUBLIC WELFARE RECOMMENDED DENIAL OF THE PETITION FOR ADOPTION AND REFUSED TO GRANT THE NECESSARY CONSENT, AND SUCH ERRONEOUS ACTION WAS NOT REVERSED ON APPEAL BY EITHER THE DISTRICT OF COLUMBIA COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The role which the Department of Public Welfare is accorded in adoption proceedings is that of an advisory agency. In this case, the Department of Public Welfare chose to withhold its consent to the adoption on the basis of its investigative report. The Court could call upon the Department to justify its recommendations and to support its actions in making the investigation, but it cannot be contended that the Department also represented the prospective adoptee.

When the Department of Welfare made a report which required a subsequent hearing, it was incumbent upon the trial court to appoint a guardian *ad litem* to represent the interests of the prospective adoptee, in order to "bring fully before the court for consideration the interests of the prospective adoptee . . . "

Specifically in point is the case of *Barnes v. Paanaker*, 111 F.2d 193, 72 App. D. C. 39, which held that it was *mandatory* for the Court to protect the interests of the prospective adoptee, and stated:

> "The first section of the Act which confers jurisdiction on the . . . Court over adoption proceedings also clothes the Court 'with authority to make such rules . . . as shall bring fully before the court for consideration the interests of the adoptee, the natural parents, the petitioner, and any other properly interested party'. . . . We are of the opinion that, under these provisions it is mandatory that the . . . Court provide full protection for the interests of the adoptee . . . Neither failure of counsel to raise the point on appeal, nor the fact that no decree of adoption was entered, relieves of this responsibility, for decision on a petition for adoption may properly be made by the . . . Court only after it has brought the interests of the adoptee fully before it."

> "For that full measure of representation and protection envisaged by the act, one legally capable of representing their interests must appear in the proceedings.

> "Nor do we think that the act contemplates that the report of the Board of Public Welfare will, in all cases, satisfy the

> statutory requirements that the interests of the adoptee be fully before the clerk. . . . Moreover, the authority given the . . . Court to make such rules . . . as shall bring fully before the court for consideration the interests of the adoptee . . . recognizes that protection *in addition to* that afforded the adoptee by the Board's report may be required in some cases. We think this is such a case.
>
> "We conclude that no one appeared in the proceedings legally qualified to represent the interests of the prospective adoptee in respect to the existence or non-existence of "extraordinary cause", the effect of adoption on their last interests, and other issues relevant to such proceedings."

Although the code has been revised since the *Barnes* decision, the provisions upon which the court at that time based its opinion remain unchanged.

No consideration or judicial determination was made by the trial court relative to the interests of the prospective adoptee. This gross and obvious failure to bring all concerned interests before the court effectively deprived all parties to the proceeding, petitioners included, of the due process of law protection afforded them by the Constitution of the United States.

Petitioners pray that this Honorable Court reverse the proceedings below and remand this case for a hearing on the petition for adoption that is not inconsistent with the established rights of due process to which petitioners are entitled.

CONCLUSION

The errors committed by the trial court were so arbitrary, gross and obvious that they prevented petitioners from bringing before the court the entire interests of all the parties and did not present petitioners an opportunity to reasonably be apprised of allegations concerning them, who made them and thereby adequately defend their reputation and their right to adopt a female infant, thereby depriving them of the due process of law protection afforded by the Constitution of the United States.

It is respectfully requested that this petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

Ex parte in the matter of	*	
the petition of Oliver Lee	*	Adoption No. _____
York and Margaret Edna	*	
York for adoption of	*	
Laura Jean Sells	*	

ORDER REFERRING PETITION TO THE DEPARTMENT OF WELFARE, WASHINGTON, D. C. FOR INVESTIGATION AND REPORT

Upon consideration of the petition of Oliver Lee York and Margaret Edna York praying for the adoption of the adoptee, a female infant, it is, by the Court, this 13 day of June, 1966,

ORDERED, that a copy of said petition be referred to the Department of Welfare, Washington, D. C. to verify the allegations of the petition, to make a thorough investigation for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioners is a suitable one for the adoptee and within a period not in excess of ninety days to report its finding with recommendation to this Court.

/s/ Joseph C. Waddy
Judge

APPENDIX B

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

DOMESTIC RELATIONS BRANCH

IN RE:

ADOPTION OF A MINOR FEMALE) A 343-66

RULE TO SHOW CAUSE

It appearing to the Court that the petitioners herein sought to adopt a female infant who was residing in their Maryland home pursuant to a contractual "Agreement for Board and Care by Foster Parents of Wards of the District of Columbia," entered into December 12, 1962, by the petitioners and the District of Columbia Department of Public Welfare, and

It further appearing to the Court that the petition to adopt was referred by The Honorable Joseph C. Waddy on June 13, 1966, to the Department of Public Welfare, Washington, D. C., for investigation and report, and

It further appearing that said investigation and report has been made and that the recommendation of the Department of Public Welfare is to the effect that the prayers of the petition be denied, and

It further appearing to the Court that the female infant has been removed from petitioners' residence pursuant to the contractual terms of the aforesaid foster parents' contract and has been placed in another foster home.

THEREFORE, PETITIONERS ARE HEREBY ORDERED TO SHOW CAUSE, if any they have, why their petition for adoption should not be denied, and further to show to this Court what standing, if any, they possess to move for an oral hearing upon the report and recommendations herein.

IT IS FURTHER ORDERED that the Department of Public Welfare show cause to this Court why there should be a finding that all procedures herein have been normal, reasonable, and accepted practice in cases of adoption herein where the Department of Public Welfare has made an investigation and recommendation after referral by this Court,

IT IS FURTHER ORDERED that the Corporation Counsel be directed to enter an appearance and to represent the Department of Public Welfare in such hearing, and it is also

ORDERED that the Clerk furnish a copy of this Rule to Show Cause to all child placing agencies licensed by the District of Columbia,

IT IS FURTHER ORDERED that in the event any such agencies should desire to enter and to file pleadings as *amicus curiae,* such leave is hereby granted.

The hearing on this rule will be scheduled for January 16, at 10 a.m., at which time the courtroom shall be sealed.

/s/ Joseph M. F. Ryan, Jr.
Judge

Dated: December 19, 1966

APPENDIX C

* * *

OPINION AND ORDER

This is an adoption case. It came on for hearing in a sealed courtroom before the Court on a rule to show cause. The rule was issued against the petitioners, husband and wife herein, and the Department of Public Welfare. That agency is before the Court in a dual capacity; first as the legal custodian of the minor child, as recited in Paragraph 5 of the petition for adoption herein. In accordance with the statute [1] on file in this Court are appropriate instruments indicating a relinquishment of parental rights to the Department of Public Welfare. The Department of Public Welfare is also before the Court because another Judge of this Court, shortly after the filing of the petition for adoption herein, referred the petition to that Department for an investigation and report.

Serious questions of jurisdiction of the Court and standing of the petitioners are initially presented. The main substantive issue and paramount consideration is the best interests of the adoptee.

The basis for jurisdiction of the Court in this particular case must depend upon the fact that "the child to be adopted is in the legal care, custody, or control of the Commissioners of the District of Columbia or their designated agency." [2] Since petitioners are neither residents of the District of Columbia, [3] nor have they actually resided in the District of Columbia for at least one year

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[1] D. C. Code § 32-786, 1961 Ed.

[2] D. C. Code, 1961 Ed., § 16-301 (b) (3)

[3] D. C. Code, 1961 Ed., § 16-301 (b) (1)

preceding the filing of the petition,[4] in order for this Court to have authority to grant a petition for adoption there must have been filed with the petition for adoption a *written statement of consent,*[5] from the Commissioners.

The particular consent necessary in the case before the Court is the one which would be required in accordance with D. C. Code, 1961 Ed., § 16-304 (b)(2)(F). No consent was filed with the petition. Under the terms of the statute, therefore, this Court may not grant the petition for adoption.[6]

Pursuant to the Order of Reference mentioned earlier, a report and recommendation was filed herein August 18, 1966, by the Department of Public Welfare. On August 29, 1966, a motion for oral hearing was filed by the petitioners' counsel. As authority for such a motion, petitioner cites the General Sessions Rules, the Federal Rules of Civil Procedure, and the District of Columbia Code Section 16, particularly 16-307 and 16-309 (a), (b), and (f).

Code Section 16-307 provides for the referral of an adoption petition for investigation, report, recommendation,

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[4] D. C. Code, 1961 Ed., § 16-301 (b) (2)

[5] D. C. Code, 1961 Ed., § 16-304 (a)

[6] D. C. Code, 1961 Ed., § 16-304. The Court is aware that under D. C. Code, 1961 Ed., § 16-304 (e) the Court may grant a petition for adoption without any of the consents specified in the Section in instances where the Court finds after hearing that the consent or consents are withheld contrary to the best interests of the child. This is discretionary power reposed in the Court to waive the consents in cases where the best interests of the child would indicate such a course. This case does not in any way warrant the use of such discretion.

and *inter alia*, provides that the written report submitted to the Court shall be filed with, and become part of the records in the case. Section 16-309 provides for the disposition of the adoption petition by the Court after it has received the report and recommendations of the agency. Subdivision B of the latter section states: "After considering the petition, the *consents*, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption. . . . " As was mentioned earlier, no consent or consents were ever filed with the petition.

Subdivision F of the same section provides that "all proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate." Every attempt was made to insulate this proceeding from publicity. During the hearing the courtroom was sealed. Each witness was individually admonished not to discuss their testimony with any other person. In spite of these precautions, however, on the day of the hearing an article appeared in the local newspapers dealing very specifically with this particular petition.

Another Code Section must be considered with respect to the standing of the petitioners to move for an oral hearing. That is the section dealing with the sealing and inspection of records and papers.[7] It provides: "From and after the filing of petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and *only then*

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[7] D. C. Code, 1961 Ed., § 16-311

when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings." No showing was made either in the motion papers or in the petition itself that the welfare of the prospective adoptee would be promoted or protected by permitting inspection of the file herein. Moreover, after hearing the testimony of witnesses and after reviewing the entire file, this Court is not satisfied that the welfare of the child would be promoted or protected by an inspection of the Court records herein, including the report and recommendations.

At the hearing on the petition, any ruling with respect to the standing of the petitioners or the jurisdiction of the Court in the matter was reserved. Testimony was taken initially upon the action of the Department of Public Welfare with respect to the reference of the petition. It appeared from the testimony that each and every step taken by the Department of Public Welfare in this case was completely in accord with settled procedures for investigation in adoption cases. There was no deviation from normal practice, and the persons interviewed by the Department of Public Welfare were individuals who had been recommended by the petitioners themselves as references.

From the information developed through the normal and usual sources, the Department of Public Welfare came to the conclusion and made the recommendation that the petition be denied. The basis of such suggested denial concerned alleged personality defects of both petitioners. In testimony it was developed that each petitioner was advised individually in private by a member of the Department of Public Welfare of the character defect in their particular case which was considered to be disqualifying. It appeared from the testimony from the petitioners themselves that they had been given this information.

When counsel for the petitioners stated that he was in a difficult position trying to refute allegations in a report which he was not allowed to see, the Court explained to the counsel and the petitioners the generic nature of the disqualifying information. In order to refute such allegations, petitioners were allowed to call; and in fact, had subpoenaed those who had been interviewed as references, as well as other character references whom they produced. The single additional witness was one subpoenaed forthwith by the Court when it appeared that she might be in a position to give useful testimony. Based upon the testimony of all the witnesses, it is the opinion of this Court that the report of the Department of Public Welfare herein is factually correct and that their conclusions and recommendations ought to be adopted and approved. It is, therefore, this 17th day of February, 1967,

ORDERED, ADJUDGED, AND DECREED that the rule to show cause issued herein so far as it pertains to the Department of Public Welfare is in every respect discharged, and

IT IS FURTHER ORDERED that the rule to show cause insofar as it pertains to the petitioners be and is in each and every respect made absolute, and

IT IS FURTHER ORDERED that the motion for an oral hearing upon the report and recommendations herein be and is overruled, and

FURTHER ORDERED that the petition for adoption herein be and hereby is denied.

/s/ Joseph M. F. Ryan, Jr.
Judge

APPENDIX D

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 4286

In Re

Adoption of a Female Infant

Appeal from the District of Columbia
Court of General Sessions

(Argued October 2, 1967 Decided January 19, 1968)

John C. Williams for appellants. *Paul J. Sedgwick* also entered an appearance for appellants.

Leo N. Gorman, Assistant Corporation Counsel, with whom *Charles T. Duncan,* Corporation Counsel, *Hubert B. Pair,* Principal Assistant Corporation Counsel, and *Richard W. Barton,* Assistant Corporation Counsel, were on the brief, for the District of Columbia.

Before Hood, Chief Judge, and Myers and Kelly, Associate Judges.

MYERS, *Associate Judge:* Appellants, husband and wife, petitioned the Domestic Relations Branch of the District of Columbia Court of General Sessions for the adoption of a female infant. From the denial of that petition, they have noted the present appeal.

In the years between 1951 and 1966, appellants, as foster parents, provided board and care for numerous wards of the District of Columbia in return for monetary consideration paid by the District. In 1951 appellants adopted one of the first children placed in their

care. Normally the children were placed in appellants' home for a few months and then removed. In 1960, adoptee, then a thirty-five day old female infant born out of wedlock, whose mother had relinquished her parental rights to the District of Columbia, was placed in appellants' home. Because the child was sickly, she remained there until 1966.

In May of that year appellants initiated adoption proceedings and the Department of Public Welfare conducted the investigation required by § 16-307 D. C. Code (1967). The investigation revealed that appellants' marital relationship had deteriorated and that, in the years since appellants had last been investigated, serious personality defects had developed in both husband and wife. The Department of Public Welfare therefore removed the child from appellants' home, recommended that the court deny appellants' petition for adoption, and withheld the consent required by § 16-304(b) (2) (F) D. C. Code 1967.

The court held a two-day hearing to determine whether, in the best interests of the child, it ought to grant appellants' petition despite the withholding of the necessary

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[1] Consent to a proposed adoption of a person under twenty-one years of age is necessary: . . .

(2) in accordance with the provisions of any one of the following paragraphs: . . .

(F) from . . . the Board of Commissioners in case the parental rights of the parent or parents have been terminated . . . by a release of parental rights to the Board . . . , based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; . . .

consent. § 16-304(e) D. C. Code (1967).[2] At the conclusion of the hearing the court denied the petition for adoption.

Appellants contend that the trial judge abused his discretion in denying the petition without first appointing a guardian *ad litem* to represent the child in the proceedings before him, and by refusing to allow appellants to inspect the investigative report prepared by the Department of Public Welfare.

In an adoption proceeding the court's primary concern is the best interests of the infant adoptee. The court has an "affirmative duty to bring those interests fully before it." *Barnes v. Paanakker,* 72 App. D. C. 39, 44, 111 F.2d 193, 198 (1940). But "[t]here is no requirement that there must be one person, such as a guardian ad litem, representing all possible interest of the adoptee." *In re Adoption of a Minor,* 74 App. D. C. 50, 51, 120 F.2d 720, 721 (1941). The adoption proceeding is *ex parte* and "[c]hildren are not necessary parties, and need not always be represented by a guardian and litem." *Boone v. Boone,* 76 U. S. App. D. C. 399, 400, 132 F.2d 14, 15 (1942). Where competing parties in the proceeding are given opportunity for a thorough hearing, and the petition is vigorously advocated and contested, and witnesses are cross-examined, the interests of the adoptee can be fully presented to the court. *In re Adoption of a Minor,* 74 App. D. C. 50, 51, 120 F.2d 720, 721 (1941).

In the instant case, petitioners and the Department of Public Welfare, which appeared on behalf of the District of Columbia as adoptee's legal guardian, § 3-117 D. C.

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[2] The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

Code (1967),[3] to contest the adoption petition, were before the trial judge. With the participants so aligned, we have no reason to doubt that all essential facts concerning the child's welfare were presented and considered by the trial judge. Appellants have not set forth any relevant facts which were not brought to the attention of the trial judge or which might have dictated a different result, nor have they shown that the best interests of the child required the trial judge to appoint a guardian *ad litem*. We find no error in his election not to do so.

Neither did the trial judge err in refusing appellants' attorney access to the investigative report submitted by the Department of Public Welfare. Counsel for appellants was not told the precise details given by each reference and was not permitted to inspect the report personally, but the trial judge related to him the findings and the information which had been gathered from the persons appellants had listed as references. While the trial judge, in his discretion, may allow parties to an adoption proceeding to inspect the investigative report if he is satisfied that protection of the child's welfare requires such inspection, § 16-311 D. C. Code (1967),[4] we do not find that the trial judge abused his discretion in the instant case by denying such access. Appellants called numerous witnesses in an effort to establish their suitability as parents and to rebut the findings of the report, but their own witnesses as well

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[3] The Board shall have full power (1) to accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Board . . .

[4] From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings.

as others called by the Department of Public Welfare and by the trial judge, described in detail incidents indicative of serious personality defects in both appellants and descriptive of a marital relationship rendering appellants unsuited to be adoptive parents. If the testimony had indicated that appellants were ideally qualified to be adoptive parents and the report had indicated otherwise, protection of the child's interests might have required that appellants' counsel be allowed to inspect the report so as to be able to rebut any derogatory finding; but such a situation does not exist here, and appellants have not shown that the welfare of the child required their personal inspection of the report.

Upon the record, we rule that the court correctly denied appellants' petition for adoption.

Affirmed.

APPENDIX E

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,628 September Term, 1967

In Re: D.C.C.A. 4286

Adoption of a Female Infant

Before: Bastian, Senior Circuit Judge; and Burger and Wright, Circuit Judges, in Chambers.

ORDER

On consideration of petitioner's petition for allowance of an appeal from a judgment of the District of Columbia Court of Appeals, of petitioner's brief in support thereof, and respondent's brief in opposition thereto, it is

ORDERED by the Court that petitioner's aforesaid petition is denied.

Per Curiam.

Circuit Judge Burger did not participate in the foregoing order.

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of July, 1968, a true and correct copy of the foregoing petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit was served upon the Office of the Corporation Counsel, Washington, D. C., which entered an appearance on behalf of the Department of Public Welfare, by depositing copy thereof in the United States Mail, Certified Return Receipt Requested, addressed to District Building, Washington, D. C.

ROBERT A. DIEMER
SEBERT H. KEIFFER

Office-Supreme Court, U.S.
FILED
AUG 1 1968
JOHN F. DAVIS, CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 257

EX PARTE, IN THE MATTER OF THE PETITION OF
OLIVER LEE YORK AND
MARGARET EDNA YORK
FOR ADOPTION OF A FEMALE INFANT

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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IN THE

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EX PARTE, IN THE MATTER OF THE PETITION OF
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FOR ADOPTION OF A FEMALE INFANT

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Where, in a case involving the enforcement of a law of purely local application, the United States Court of Appeals for the District of Columbia Circuit denied discretionary review of the judgment of the District of Columbia Court of Appeals, was such case ever *in* the Court of Appeals for purposes of review on writ of certiorari under 28 U. S. C. § 1254?

2. Were petitioners in an adoption proceeding denied due process of law when, absent the required showing that inspection of the investigative report of the Department of Public Welfare would promote the welfare of the prospective adoptee, the court refused their request to inspect such report?

3. Were petitioners denied due process of law when the court failed *sua sponte* to appoint a guardian *ad litem* to represent the interests of the prospective adoptee?

COUNTER-STATEMENT OF THE CASE

Petitioners, husband and wife, petitioned the District of Columbia Court of General Sessions, Domestic Relations Branch, for the adoption of a female infant, a ward of the District of Columbia Department of Public Welfare, who had been placed in petitioners' home on a foster care basis. Thereafter, the trial court conducted a two-day hearing on the petition, at which it appeared that the Department of Public Welfare, after a full investigation which reflected adversely upon petitioners' suitability as adoptive parents, removed the child from petitioners' home and declined to consent to the adoption. (R. 108.) During the course of the hearing, petitioners requested the court to permit an examination of the investigative report of the Department of Public Welfare, prepared pursuant to D. C. Code, § 16-307 (1967). The request was denied, but the substance of the report was, nevertheless, stated to petitioners. (R. 101-106.) The evidence adduced disclosed that petitioners' marital relationship had deteriorated and that, in the years since petitioners had last been investigated, serious personality defects had developed in both husband and wife (R. 147-150, 152-153, 168-172, 177, 186, 206-208, 212-213, 274, 277-282). At the conclusion of the hearing, the court denied the petition for adoption (R. 334).

Petitioners appealed to the District of Columbia Court of Appeals, contending that the trial court erred (1) in refusing to allow petitioners or their counsel to examine the investigative report of the Department of Public Welfare and (2) in not *sua sponte* appointing a guardian *ad litem* for the prospective adoptee. On January 19, 1968, the District of Columbia Court of Appeals unanimously rejected both contentions and affirmed the judgment of trial court (petitioners' appendix D). Pursuant to D. C.

Code, § 11-321 (1967), petitioners then filed a petition for the allowance of an appeal in the United States Court of Appeals for the District of Columbia Circuit. On April 4, 1968, the United States Court of Appeals entered an order denying the petition for allowance of an appeal (petitioners' appendix E). Petitioners then filed in this Court a petition for a writ of certiorari.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any substantial federal question warranting the exercise of this Court's jurisdiction to review on writ of certiorari.

The jurisdiction of the Supreme Court to review on writ of certiorari is clearly defined by 28 U. S. C. § 1254, which provides in pertinent part that:

> "Cases *in the courts of appeals* may be reviewed by the Supreme Court by the following methods:
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * * ." [Emphasis added.]

In as much as the United States Court of Appeals denied the petition to it for allowance of an appeal from the judgment of the District of Columbia Court of Appeals, it is quite apparent that this case was never *in* a court of appeals for purposes of review on writ of certiorari under 28 U. S. C. § 1254, *supra*. See *Ferguson* v. *District of Columbia*, 270 U. S. 633 (1926), where a petition for a writ of certiorari to review the order of the Court of Appeals of the District of Columbia (now the United States Court of Appeals for the District of Columbia Circuit) denying a writ of error to the Police Court of the District of Columbia (now the District of Columbia Court of General Sessions) was denied by the Supreme Court for want of jurisdiction under § 240 of the Judicial Code, as amended

by the Act of February 13, 1925, Ch. 229, § 1(a), 43 Stat. 938 (now 28 U. S. C. § 1254).

But even if this case can be considered a case *in* the court appeals within the purview of 28 U. S. C. § 1254, *supra,* it is clear from the record that it involves nothing more than the application of statutes of purely local concern respecting procedures in adoption cases. This Court has made it clear on more than one occasion that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of egregious error, exercise its jurisdiction. *Del Vecchio* v. *Bowers,* 296 U. S. 280, 285 (1935); *District of Columbia* v. *Pace,* 320 U. S. 698, 702 (1944); *Busby* v. *Electric Utilities Union,* 323 U. S. 72, 74-75 (1944); *Fisher v. United States,* 328 U. S. 463, 476-477 (1946); *Griffin* v. *United States,* 336 U. S. 704, 717-718 (1949), rehearing denied, 337 U. S. 921 (1949). Not only has there been no showing of egregious error, there has been no showing of any error.

A

Petitioners' first contention is that they were denied due process of law when the trial court refused to permit them or their counsel to inspect the investigative report of the Department of Public Welfare.

In this connection, D. C. Code, § 16-311 (1967), provides in part:

> "From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and *only then when the court is satisfied that the welfare of the child will thereby be promoted or protected.* * * * " [Emphasis added.]

In order to afford petitioners an opportunity to establish their standing to inspect the investigative report, the trial court permitted the Department of Public Welfare official who compiled the report to testify regarding the nature of the allegations contained therein (R. 101-106). Petitioners then called as witnesses several persons who had been interviewed by Department officials during the background investigation. These witnesses, all close neighbors of the petitioners, testimonially confirmed the derogatory information contained in the investigative report. (R. 147-150, 152-153, 168-172, 177, 186, 206-208, 212-213, 274, 277-282.)

The case of *In re Blumenthal's Adoption,* 346 F. 2d 783 (3rd Cir., 1965) (cited at p. 12 of petitioners' brief), is of no aid to petitioners. Under the circumstances of that case, the court stated that the confidential report of the Welfare Department "* * * should have been subject to examination, to objection, to contradiction. * * *" (346 F. 2d at 789.) There, however, the question of the contents of the Welfare Department report was never raised at the hearing. Such a situation is in sharp contrast with the record in the instant case from which it appears that petitioners were told the substance of the investigative report and were permitted to call to the stand and examine the persons who supplied the information contained in such report.

In any event, the adoption could not have been granted without the written consent of the Department of Public Welfare, the prospective adoptee's legal guardian (D. C. Code, § 16-304(a) (1967)), unless the court found that such consent was being "withheld contrary to the best interests of the child." D. C. Code, § 16-304(e) (1967). The Department of Public Welfare refused to consent to the adoption, and, in view of testimony regarding petitioners' personality defects, it cannot reasonably be contended that the trial court abused its discretion in not finding that the Depart-

ment's consent was being withheld contrary to the best interests of the prospective adoptee. (See petitioners' appendix C-2, footnote 6.)

At page 13 of their brief, petitioners assert that the trial court denied them "a hearing on the withholding of consent." The question of the withholding of consent to adoption was never specifically raised in the trial court. However, it is clear, as the District of Columbia Court of Appeals noted, that the two-day hearing was held for the purpose of determining "* * * whether, in the best interests of the child, it [the trial court] ought to grant appellants' petition despite the withholding of the necessary consent. * * *" (Petitioners' appendix D-2, D-3.)

B

Petitioners' second contention is that they were denied due process of law when the trial court did not *sua sponte* appoint a guardian *ad litem* to represent the interests of the prospective adoptee.

The law is clear that a guardian *ad litem* need not be appointed in every adoption case,[1] and that, in an adversary proceeding, the prospective adoptee's interests may be adequately represented and protected by the adversaries. *In re Adoption of a Minor,* 74 App. D. C. 50, 120 F.2d 720 (1941); see also *Boone v. Boone,* 76 U. S. App. D. C. 399, 132 F. 2d 14 (1942), cert. denied, 319 U. S. 762 (1943).

Unquestionably, the hearing before the court below on the adoption petition was adversary in character. The adversaries were petitioners, the prospective adoptors, and the Department of Public Welfare, the legal guardian of the prospective adoptee. Each was contending for the custody of the prospective adoptee; each was represented

[1] Rule 5(b) of the Rules of the Domestic Relations Branch, Court of General Sessions, provides in part: "In any domestic relations case involving the * * * adoption of minor children the Court *may* appoint a guardian a d l i t e m to investigate the matter and report in writing to the Court. * * *" [Emphasis added.]

by counsel; and each called numerous witnesses who were extensively examined and cross-examined. Clearly, it can be said of the proceeding that: "All factors in respect of the best interests of the adoptee * * * were tested in the crucible of a thorough hearing, in which the adoption was vigorously presented and vigorously contested and the cross-examinations were rigorous." *In re Adoption of a Minor, supra,* 74 App. D. C. at 50, 120 F. 2d at 721.

Moreover, petitioners do not now even suggest that there are any relevant facts which were not, but might have been, presented to the trial court had a guardian *ad litem* been appointed.

CONCLUSION

It is clear from the foregoing that petitioners have utterly failed to present any ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The petition for writ of certiorari should, therefore, be denied.

Respectfully submitted,

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